

Third Party Provider, Title IX NRG

D-24. If a private school official requests that certain services be delivered through a third party and the LEA chooses not to do so, what should the LEA include in the written explanation as to the reasons why it chose not to grant that request?

Section 9501(c)(2) of the *ESEA* requires an LEA to provide a “written explanation of the reasons” why it chose not to use a third party for services. An adequate explanation would address concerns expressed by private school officials about the LEA’s direct services and fully explain the reasons why the LEA chose not to use a third party, such as any financial, administrative, regulatory, or statutory impediments, or the ability of the LEA to provide the services directly. The written explanation should not simply reiterate the LEA’s decision but also provide reasons for the decision.

F-3. What are allowable expenditures that an LEA may reserve off the top of the total allocation?

An LEA may reserve off the top of a program’s total allocation the following:

- Administrative costs (which may be subject to statutory caps) for administering the program for public and private school students and teachers;
- Indirect costs associated with administering the program for public and private school students and teachers (except for the Even Start Family Literacy, Indian Tribal Even Start, and Migrant Education Even Start programs, in which indirect costs are unallowable);
- Other allowable administrative costs as defined in the statute (e.g., for district-wide programs); and
- A third party provider’s fee or profit.

(See 34 C.F.R. §§74.27; and 80.22; and OMB Cost Circular A-87)

F-4. May a third party under contract with an LEA incur administrative costs?

Yes. A third party under contract with an LEA to provide services to private school students and teachers may incur administrative costs, including its fee or profit. These costs must come off the top of the LEA’s total program allocation as administrative costs. The LEA may not charge a third-party provider’s administrative costs to the funds allocated for services for private school students and teachers. To facilitate this determination, the parties should identify in the contract the portion of the costs that are administrative, and the LEA should use funds taken off the top of its total allocation to pay this portion of the contract.

G-1. Who has the responsibility to implement programs for private school students, teachers, and other education personnel?

Generally, the LEA has this responsibility. However, in cases when the grant recipient is another entity, this responsibility becomes that of the SEA, educational service agency, institution of higher education, consortium of those agencies, or other entity that receives the grant. (See the note in Section B of this guidance.)

If an LEA contracts with a third-party provider to provide services and benefits to eligible private school students and teachers, the LEA remains responsible for ensuring that private school students and teachers receive equitable services and the requirements of the statute and regulations are met.

G-2. What services are offered if the needs of private school students and teachers are different from those of public school students and teachers?

The LEA offers services that meet the specific educational needs of the participating private school students and teachers and that show reasonable promise of effectiveness. The services can be different from those provided to public school students and teachers, but must be allowable services under the particular ESEA program. In addition, all services and benefits provided must be secular, neutral, and non-ideological. (See section 9501(a)(1)--(2) of ESEA).

G-3. What are some service delivery mechanisms that an LEA may use to provide equitable services?

An LEA may provide services to private school students and teachers through an employee of the LEA or through a contract with a third-party provider, an individual, an education institution, or some other agency that, in the provision of those services, is under the control and supervision of the LEA and is otherwise independent of the private school and any religious organization. (See section 9501(d)(2) of ESEA.)

Section G, Title II-A NRGs

G-17. When an LEA provides services to private schools through a third-party contractor, is the contractor permitted to charge administrative costs?

No. Administrative costs of providing services to *both* public and private school students come “off the top” of a district’s allocation before the equal expenditures are computed. Since the LEA is reserving its administrative costs “off the top,” then the contract administrative costs (including any fee) must come from that set-aside.